

FILED

MAY 22 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

J. GUADALUPE TORRES-VASQUEZ,

Defendant - Appellant.

No. 05-50856

D.C. No. CR-05-00767-WQH

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted May 15, 2006 ^{**}

Before: B. FLETCHER, TROTT, CALLAHAN, Circuit Judges.

J. Guadalupe Torres-Vasquez appeals the sentence imposed following his guilty plea to illegal reentry following deportation in violation of 8 U.S.C. § 1326.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Torres-Vasquez contends that the district court violated his Sixth Amendment rights by enhancing his sentence based on a prior conviction not admitted or found by a jury. He contends that this court should hold that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) **should be limited to situations where the defendant admits the prior conviction and subsequent deportation during a plea colloquy and that this court's case law has been effectively overruled by *Shepard v. United States*, 544 U.S. 13, (2005), and other recent Supreme Court decisions. These contentions are foreclosed. See *United States v. Weiland*, 420 F.3d 1062, 1080 n.16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres* even though it has been called into question, unless it is explicitly overruled by the Supreme Court).**

_____**AFFIRMED.**